IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC.	CIVIL NO.: 07- 1658 (JAF)
Plaintiff,	
v.	BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES.
CEMEX PUERTO RICO; CANOPY ECOTERRA CORP.; XYZ INSURANCE COMPANIES.	JURY TRIAL DEMANDED
Defendants.	

MOTION REQUESTING A TEMPORARY RESTRAINING ORDER

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING**, **LLC,** (hereinafter, "AWMR") and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

Plaintiff submits Motion for Temporary Restraining Order pursuant to Fed. R. Civ. P. 65. Submitted herewith in support of Plaintiff's motion is the unsworn statement under penalty of perjury of the representative of the Plaintiff.

The facts of this case are more clearly outlined in the Verified Complaint (docket No. 1), and in the Motion for Preliminary Injunction filed on this same day. This case deals with a breach of contract, wherein Defendant Canopy Ecoterra breached a contract for the dismantling of the CEMEX plant in Ponce, Puerto Rico, while five months remained to perform on an eight month

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contract. During the time the contract was in effect, Ecoterra stole three copper containers property of AWMR valued at over $250,000, under CEMEX Puerto Rico's watch and acquiescence. Ecoterra broke the locks to the containers within the presence of CEMEX personnel, and took them out of the CEMEX site, and CEMEX did nothing to prevent the theft, nor to get the material back.

On July 5, 2007, Ecoterra terminated AWMR's contract for dismantling the plant, having given AWMR a thirty day cure period that expired that day. Before the cure period terminated, however, on June 26, 2007, CEMEX suddenly instructed AWMR to cease all work, and then instructed AWMR employees to leave the site. AWMR was not given time to secure the work theretofore performed on site, leaving its equipment was stranded, its office and files left "as is", and international shipping containers with AWMR goods, as well as processed items, on the site. As a matter of fact, due to CEMEX's insistence that AWMR continue to work until the end of the cure period, several containers were checked into CEMEX, and were to have departed on that day, but were forced to stay.

AWMR then asked CEMEX for their extracted material to be let out of the site, and after CEMEX and Ecoterra agreed to release the containers in writing, Ecoterra suddenly withdrew its permission. AWMR had already spent money making arrangements for the pickup and shipments of these containers from the CEMEX site.

As of today, six containers of metal harvested by AWMR sit in the site (and two empty ones), with Ecoterra and CEMEX refusing to allow their exit from the site. These eight containers are sitting on CEMEX's lot *precisely* because CEMEX management requested AWMR work until the very last minute of the last day of the cure period. Before the cure period expired, however, AWMR employees and its officer engineers were forcibly removed by CEMEX personnel.

Upon information and belief, Ecoterra is back on the CEMEX site *and actively working on dismantling the plant as of this writing.* CEMEX is therefore permitting Ecoterra to take the materials already harvested by AWMR, allowing Ecoterra to extract materials fruit of AWMR's labor and equipment, and which AWMR has made readily accessible for extraction. *See Exhibit 1 to this Motion*. At this moment, CEMEX is detaining AWMR's scrap and equipment and also allowing Ecoterra, while there is an ongoing criminal investigation in the conduct of Ecoterra and his President, Mr. Barsotelli, back on the premises and denying AWMR access to their own harvested material, which it clearly owns according to the terms of the contract, and is in fact, currently loaded onto containers which were checked into the CEMEX site by AWMR.

AWMR is seeking this TRO in order to secure its property on the site, since Ecoterra had previously stolen containers from the CEMEX site, and CEMEX allowed the containers to exit their site. Consequently, the fact that Ecoterra is openly working on the site and extracting materials puts in jeopardy AWMR's loaded containers and other materials lying on the site. Therefore, the TRO is essential to protect AWMR's interests at the CEMEX site while this matter is finalized and an injunction hearing is held. AWMR specifically requests that the loaded containers belonging to AWMR and the material that is lying on the ground already harvested by AWMR not be touched or removed by anyone.

The standard for injunctive relief in the First Circuit requires the moving party demonstrate likelihood of success on the merits and irreparable harm if relief is not granted. *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000)*; New Comm*

Wireless Services, Inc. v. SprintCom, Inc., 287 F.3d 1, 8-9 (1st Cir. 2002). The instant claim of relief meets all of those requirements, as detailed in te Motion Requesting Preliminary Injunction filed together with this motion, and should therefore be granted in all respects. A statement from Mr. Abul Shah, Chief Operating Officer of AWMR, is made to form a part of this motion as its *Exhibit 1*.

AWMR agrees to post a bond as required by this Court pursuant to the Federal Rules in whatever amount the Court determines is appropriate in this case, and requests that a hearing be set for the next available date on the Court's calendar. AWMR respectfully informs the Court that it will be serving a copy of this motion together with the Motion Requesting Preliminary Injunction personally upon both Defendants, along with a copy of the Complaint in this case, and will promptly inform the Court once it has done so.

WHEREFORE, AWMR respectfully requests that the Court **GRANT** this motion, together with any further relief it deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of August, 2007.

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